

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10283-RWZ

GERALD MALONE

v.

KATHLEEN M. DENNEHY

ORDER ON MOTION FOR CERTIFICATE OF APPEALABILITY

August 21, 2007

ZOBEL, D.J.

Petitioner for a writ of habeas corpus, Gerald Malone, was convicted in the state court by a jury of rape of a child and indecent assault and battery on a person under the age of 14. After exhausting the state appellate process he filed the instant petition in which he claims that his trial counsel was constitutionally ineffective. I denied the writ and petitioner now seeks a certificate of appealability. The alleged deficiency was the failure to call as a witness the police officer who initially interviewed the victim and who apparently received information at variance with that the victim recounted at the trial. While I continue to adhere to my judgment that counsel was not ineffective, it is a judgment with which another may reasonably disagree. Accordingly, the certificate of appealability is granted only as to the issue, whether defense counsel was ineffective by failing to call the officer.

August 21, 2007

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE